

session of the Senate and we will proceed with the cloture vote on the underlying bill at 5:30 p.m. on Monday. Shortly after that vote, I hope to get to final passage on the FAA reauthorization so we can move on to other business in the Senate.

#### MORNING BUSINESS

Mr. THUNE. Mr. President, I ask unanimous consent that the Senate be in a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THUNE. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. KING. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from Maine.

(The remarks of Mr. KING pertaining to the introduction of S. 2800 are printed in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

#### NOMINATION OF MERRICK GARLAND

Mr. KING. Mr. President, I also want to address a second issue while I have the floor, and that is a conversation I had yesterday with Judge Merrick Garland. We had an opportunity to talk in my office for about 45 minutes to an hour. We talked about a wide range of topics: the limits on the President's Executive authority, how the Court should provide oversight to regulatory agencies, the Second Amendment, the role of stare decisis respect for precedence, general judicial philosophy. We talked about a number of issues, and I wanted to share with the Senate some observations from that meeting.

No. 1, the first thing I thought of last night after reflecting upon this conversation is that I used to be in the judge-appointing business. As Governor of Maine, I probably appointed 10 or 15 judges over my 8-year term, maybe more. I don't have a specific number, but I do recall the process which brought prospective judges in by a judicial selection committee, and then I would consider their qualifications and interview them in much the same way I did yesterday.

I always look for the same qualities: first, high intellect; knowledge of the law; nonpomposity—as a young lawyer, I didn't like pompous judges, and I don't like people who uphold themselves, particularly when they are in positions of authority, so a kind of modest demeanor; finally, a temperament whereby they can apply the law and make decisions without any dis-

cernible political or ideological bent. Indeed, as I thought back on the conversation I had with Judge Garland yesterday, I realized that he exactly fit that criteria. Were he an applicant or a candidate for the supreme court in the State of Maine and if I were the Governor, he would be the kind of guy I was looking for.

The other thing I reflected on as I was thinking about the conversation is that I wish the people of America had been looking over my shoulder and had heard the conversation, the questions, heard his answers, studied his body language and how he approached these questions, how his mind works, how he thinks.

I thought about the fact that many of us are having these meetings with the judge over these weeks, Members from both parties, and what we are doing is kind of a slow-motion hearing without the public being able to watch what is going on. I think that is where we are missing the boat on this nomination.

I fully understand the discretion every Senator has to make their own decision on whether this is a nomination that should go forward, but we are denying the American people the opportunity to participate in this process by not having a hearing and allowing them to see and hear and meet Judge Garland. I don't understand that.

Well, I guess I do understand the politics, and I will talk about that in a minute, but I don't understand why we are shutting the people out of this process, because if there was a hearing, it would probably go on for hours, there would be dozens of questions, the Senators could ask all the questions they wanted, and the public and the Senators would be able to observe this man and get a feel for who he is, what he would bring to this job, and the kind of person he is.

I have not made a final decision. If and when he is brought to the floor for a vote, I haven't yet decided how I will vote, although based upon my meeting yesterday and my knowledge of his prior judicial experience and his reputation, I am inclined to say yes. But I want to have a hearing. I want to see how he does in that hot seat where he is asked difficult questions by our colleagues. I want to see the reaction not only of the Senators but of the people of America as they have a chance to meet Judge Garland.

One of the things that concerns me about this process—and ironically Chief Justice Roberts commented on this just a few months ago, before the death of Justice Scalia—is the politicization of the Supreme Court. I am not naive, and I realize the Supreme Court makes important fundamental decisions. It is an important part of our governmental structure and makes far-reaching decisions that have effects on many people across the country. But I am afraid that today we have gotten to the point where the Supreme Court is treated as almost like a third

branch of Congress. It is another political body. Instead of being elected by the people, it is being elected by the Senators, and we are arguing about who gets to elect this so-called swing vote and which way the Court is going to be.

The Supreme Court should not be a political body, period. It should be a body made up of people—my impression of Judge Garland—who are servants of the law, who are students of the law, who are moderate and temperate.

I walked out of our meeting and I thought, this guy is a conservative with a small "c." He is a modest man with a deep knowledge of the law and a razor-sharp intellect but no political or ideological agenda that I could discern. I suspect that if and when—I believe it will ultimately be when—he is confirmed, he will turn into a Justice who will vote on one side of issues sometimes and make certain people happy and others unhappy at other times. I think he is going to be a straight-down-the-middle judge who calls it as he sees it, and I think that is exactly what we need on the Supreme Court today.

The other quality he has demonstrated as chief judge of the circuit court is the ability to bring consensus. By all reports of people who have worked with him—judges, people who have known him—he is a consensus builder. He is not a flamboyant, strong, charismatic kind of guy, but he brings people together. He marshals the court. He works toward unanimity. He is not a dissenter. He is not a firebrand. He is principled, but he is a consensus builder, and we definitely need that.

Five-to-four decisions, whichever way they go, in the long run are not good for the country, in my view, because they divide us and illegitimize the Court as a judicial arbiter of the Constitution as opposed to another political branch of our government.

So I believe what we should be doing is fulfilling our constitutional responsibility—not to vote yes, necessarily. The Constitution does not say the President shall nominate and we shall approve—but to consider and to advise and consent. That involves the simple matter of a hearing and would include the American people in the process.

There is a lot of discussion here of "let's hear from the American people." The way to hear from the American people is to have hearings, let them watch, let them take the measure of this person, and let us know how they think we should carry forth our constitutional responsibility in this case.

He appears to be—from what I know so far—an extraordinary candidate, not ideological, not partisan. I have no idea of his partisan background. I did not even ask him. It occurred to me afterward that perhaps I should have, but I didn't. I know he has worked in the Justice Department. He has been a prosecutor. He has been a private attorney, and he has been a very well respected judge.